

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MATTHEW ALLEN,

3:11-CV-00218-PK

Plaintiff,

ORDER

v.

STATE OF OREGON; DON MILLS,
Superintendent; LAINE
IVERSON, Captain; LORI DAVIS,
Captain; SONNY RIDER,
Captain; DAREN DUFLOTH,
Lieutenant; JAMES EDISON,
Lieutenant; JOHN MYRIC,
Lieutenant; CAMERON BAUER,
Corporal; and TORRES,
Corrections Officer,

Defendants.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and
Recommendation (#51) on January 31, 2012, in which he recommended

the Court grant in part and deny as moot in part Defendants' Motion (#17) to Dismiss and enter a final judgment in this matter. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

In his Objections, Plaintiff reiterates the arguments contained in his Response to Defendants' Motion to Dismiss. This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#51). Accordingly, the Court

- (1) **GRANTS** Defendants' Motion (#17) to Dismiss Plaintiff's negligence claim against the State of Oregon for lack

of subject-matter jurisdiction, **DENIES as moot** Defendants' Motion (#17) to Dismiss Plaintiff's negligence claim against the State of Oregon for lack of personal jurisdiction, and **DISMISSES** Plaintiff's negligence claim **without prejudice**; and

- (2) **GRANTS** Defendants' Motion (#17) to Dismiss Plaintiffs' § 1983 claims for failure to exhaust administrative remedies and **DISMISSES** those claims **without prejudice.**

IT IS SO ORDERED.

DATED this 29th day of February, 2012.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge